IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1120 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R U SHAH

Versus

DURGABEN NEMCHAND

Appearance:

(MR RV DESHMUKH) for Petitioner

MR NS SHETH for Respondent No. 1

MR KT DAVE, APP for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/03/2000

ORAL JUDGEMENT

1. Respondent - Durgaben Nemchand original accused came to be convicted for the offence punishable u/S. 7 read with sec. 16 of the Prevention of Food Adulteration

Act (for short 'the Act') read with rule 50 of the Prevention of Food Adulteration Rules (for short 'the Rules') and sentenced to undergo imprisonment till rising of the Court and to pay fine of Rs.75/-, indefault to suffer simple imprisonment for 7 days by the Ld. Judicial Magistrate First Class, (Municipal Court) Surat in Criminal Case No. 66/1983. In Criminal Revision Application No. 91 of 1984 preferred by the said accused before the Sessions Court at Surat, the Ld. Sessions Judge over turned the conviction as per his judgment and order of acquittal dated 13/12/1984. That is how the original complainant has been before this Court with leave in this appeal.

2. I have heard the Ld. A.P.P. Mr.K.T. Dave who appears for the respondent no. 2 - State of Gujarat and Mr. N.S. Sheth, learned advocate for the accused. It would appear from the prosecution case that the appellant being the complainant Food Inspector Mr. R.U. Shah visited cabin of the accused Durgaben and from the alleged information he received from her it appeared that she was proprietor of Veena Soda Factory situated at Badekha Chakla, nearby Municipal School, Surat. At the time of visit of the complainant at around 2.45 p.m. on 17/10/1983 at the aforesaid cabin the accused was preparing, selling and storing cold drinks without securing licence for the year 1983-84. On going through the record of the case and upon appreciation of the evidence the Ld. Sessions Judge found that the trial Court did not follow the procedure prescribed for the trial of summons case or of warrant case. The complaint of the appellant was treated as a private complaint. Having not discharged the accused, charge u/S. 246 of the Code of Criminal Procedure, 1973 (for short 'the Code') ought to have been framed and the plea of the accused ought to have been recorded by the trial Court. The trial Court even did not care to state the particulars of the offence alleged to have been committed by the accused and record her plea. Referring to a decision of the Bombay High Court contained in the case of Mulkraj Bodhraj Chabra v. Nagpur Municipal Corporation reported in AIR 1965 Bombay 30 the Ld. Sessions Judge concluded that the conviction deserved to be set aside only on that ground. Even on facts the Ld. Sessions Judge noticed that the complainant failed to place on record any material which would show beyond reasonable doubt that the accused either manufactured or dealt in aerated and/or carbonated water for which licence was necessary. On that ground also the Ld. Sessions Judge concluded that the conviction could not be upheld.

Mr. K.T. Dave, Ld. APP had taken this Court through the record of the case and the evidence adduced by the prosecution. Having verified that and factual conclusions rendered by the Ld. Sessions Judge, it would not be possible to support the conviction rendered by the trial Court.

In the result, bearing in mind the facts of the case, this appeal is required to be dismissed. Order accordingly.

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PVR.